

## CAP. XXVIII.

An Act in further amendment of the Criminal Law.

*Passed 11th April 1843.*

Preamble.

**6** WHEREAS the practice of Defendants who are indicted for misdemeanors 'at any Court of Oyer and Terminer traversing, without cause shewn therefor, to a following Court, is found from the length of time intervening between the several Courts, and the difficulty of securing the attendance of Witnesses to obstruct the due administration of Justice ;'

Right of traverse by persons indicted of misdemeanors abolished.

I. Be it enacted by the Lieutenant Governor, Legislative Council and Assembly, That the right of traverse now claimed and exercised by persons indicted of any misdemeanor or misdemeanors at any Court or Sessions of Oyer and Terminer appointed to be holden by any Act of Assembly, or by any Commission issued under the Great Seal of this Province, shall be, and the same is hereby taken away and abolished ; and that hereafter every Indictment against any person or persons for any misdemeanor or misdemeanors shall be heard, tried and finally determined at the same Court of Oyer and Terminer, at which such Indictment shall have been preferred, unless the Court shall think proper upon cause shewn to adjourn the same to the next or any subsequent Court of Oyer and Terminer.

Indictments for misdemeanors to be tried at the Court where preferred, unless the Court adjourn the same.

Judge presiding at Oyer and Terminer may issue special precept for summoning Jurors for Trial of persons indicted of any Capital Felony.

II. 'And whereas it may occasionally be necessary for the trial of any person 'or persons indicted of any Capital Felony that more than the ordinary number 'of Jurors should be summoned, and that a special precept or venire should issue 'in such case ;' Be it further enacted, that it shall and may be lawful, whenever the same shall appear to be necessary, for the Judges of the Supreme Court, or any one of them who may preside at any Court of Oyer and Terminer or General Gaol Delivery holden as aforesaid, at which any Indictment may be preferred or shall come on to be tried against any person or persons for any Felony or Crime for which the punishment of death is awarded, to issue a special precept under his hand and seal, or direct a special venire to issue under the seal of the Court, directed to the Sheriff of the County or City and County in which such Court may be holden, commanding such Sheriff to summon such number of men duly qualified as to such Judge may seem proper, and in such precept or venire to be stated, to appear and serve as Jurors for the trial of the person or persons so indicted as aforesaid, on a day to be named in such precept or venire, which day shall in no case be earlier than the third day inclusive, after the day on which such precept or venire shall be issued ; and such Sheriff shall cause such persons to be personally summoned, and shall return a panel of such Jurors to the Court on the day named in the precept or venire ; and such Jurors so summoned shall give their attendance accordingly ; and the names of such Jurors so summoned, impannelled and returned, shall be called from the said panel when the indictment is to be tried, and if any of the persons so called as Jurors, shall not appear, or shall be challenged, excused or set aside, then a further number shall be called, until twelve shall be allowed and sworn, who shall be the Jury for the said trial : Provided always, that in case a sufficient number of Jurors named in such panel shall not appear or be allowed, a tales may be awarded to complete the Jury, as is now by Law directed : And provided also, that no Juror shall be fined for non-attendance according to the exigency of such special precept or venire, unless proof be duly made by affidavit or *viva voce* in open Court, by the summoning officer, that he was personally summoned at least forty eight hours before the time appointed for his appearance.

Persons to be personally summoned and panel returned.

Jurors to be called from the panel until twelve be allowed.

A tales may be awarded to complete the Jury.

No fine for non-attendance allowed, without proof of 48 hours personal service.